

NCLUG : 19.April.2005

Update on SCO Linux Litigation

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Copyright 2005 Tools Made Tough

SCO Linux Litigation Agenda

- Review Timeline
 - Review SCO's claims against IBM
 - Review SCO money trail and MS
 - Review SCO letter to Congress
 - Review Other, related lawsuits
 - Closing Thoughts
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- Most of research comes from Computer World

SCO Linux Litigation Timeline

23.January.2003	SCO to enforce its IP in Linux world
7.March.2003	SCO sues IBM for \$1B in IP fight
19.May.2003	Users Outraged as SCO stakes Linux Legal Claim
	Linux Vendors Reject SCO's Legal Claims
	SCO confirms Microsoft has licensed its Unix technology
23.May.2003	SCO's licensing deal with Microsoft raises user doubts
26.May.2003	Critics Question Motives in Microsoft/SCO Deal

SCO Linux Litigation Timeline 2

26.May.2003	SCO's Stock Plot
28.May.2003	Novel calls on SCO to prove allegations about Linux
4.June.2003	SCO hit by legal action in Germany
10.June.2003	SCO shows Linux code to analysts
16.June.2003	Analysts Say Evidence May Support SCO Case
	SCO pulls IBM's AIX license in Unix dispute
10.July.2003	Open-source experts critique SCO lawsuit against IBM

SCO Linux Litigation Timeline 3

28.July.2003	SCO's Shell Game
4.August.2003	Red Hat fires back at SCO in Linux fight
11.August.2003	SCO gets first licensee for Unix IP software license
26.August.2003	SCO web site knocked out for three days
3.September.2003	SCO fined \$10,800 in Germany for Linux claims
10.September.2003	Torvalds to SCO: Negotiate what?
16.September.2003	SCO moves to dismiss Red Hat lawsuit

SCO Linux Litigation Timeline 4

26.September.2003	SCO infringed copyright, IBM alleges in new claim
2.October.2003	SCO threatens to revoke SGI's Unix license
17.October.2003	SCO gives Linux users more time on license fee charges
22.October.2003	SCO now says Linux license for big users only
8.December.2003	Court rules for IBM in preliminary SCO hearing
22.December.2003	SCO sends notices to 6,000 Unix licensees
5.January.2004	Novell, SCO Fight over Ownership of Unix Code

SCO Linux Litigation Timeline 5

14.January.2004	SCO shows disputed code to IBM
23.January.2004	SCO to Congress: Linux hurts the U.S.
6.February.2004	SCO looks to widen Linux complaint against IBM
16.February.2004	AT&T Trips Up SCO
3.March.2004	SCO lawsuits target DaimlerChrysler, AutoZone
11.March.2004	Microsoft behind \$50M SCO investment
7.April.2004	Judge delays Red Hat-SCO suit, pending IBM action

SCO Linux Litigation Timeline 6

29.April.2004	DaimlerChrysler responds to SCO lawsuit
21.July.2004	Michigan judge throws out SCO lawsuit against DaimlerChrysler
26.July.2004	BayStar threatens SCO with lawsuit
11.August.2004	Novell again seeks to dismiss SCO's claims
17.August.2004	IBM seeks dismissal in second part of SCO case
1.September.2004	SCO caps legal costs as losses mount
22.December.2004	SCO Group revenue drops 58%, losses increase as legal fight continues

SCO Linux Litigation Timeline 7

20.January.2005	SCO wins legal round against IBM over Linux code
7.February.2005	Ray's Return
11.February.2005	Judge declares SCO's lack of evidence 'astonishing'
17.February.2005	Nasdaq warns SCO of possible delisting

SCO's claims against IBM

- 7.March.2003
- \$1 Billion suit
 - Misappropriation of trade secrets
- “...the lawsuit was inspired by public comments made recently by IBM executives who have allegedly said they're moving features from IBM's AIX Unix into Linux to benefit enterprise customers as part of IBM's Linux strategy.”

SCO's claims against IBM

- 2.June.2003
 - “Let's see if we've got this right: It turns out that SCO Group doesn't actually have the Unix-related copyrights and patents it led people to believe it had. It turns out that Novell, from which SCO implied it had acquired those copyrights and patents, refused to transfer them to SCO. And it turns out that SCO has known this for a while, because SCO kept sending Novell letters asking Novell to transfer the copyrights and patents to SCO, and Novell ignored SCO's letters.”
 - “We know SCO is now explaining that its lawsuit against IBM is really just a contract dispute, not a suit over copyrights and patents -- a fairly safe position for the moment, since we don't know exactly what's in the IBM Unix contract.”

AT&T a White Knight for IBM?

- It was a copy of "\$ echo," a newsletter published by AT&T in 1985 for its Unix licensees. In it, AT&T clarified what that derivative-works clause in the Unix license meant. (Apparently, there was confusion about it even then.)
- AT&T said it wanted "to assure licensees that AT&T will claim no ownership in the software that they developed -- only the portion of the software developed by AT&T."
- In other words, AT&T never intended for Unix licensees to give up ownership of code they added to their versions of Unix. That was never part of the deal. And the deal AT&T cut is the one SCO has to live with -- even 19 years later. That's how contracts work.
- Of the million lines of Linux code that SCO claims IBM hijacked from Unix, SCO hasn't identified a single line that came from the original Unix source code. It was all created by IBM. According to AT&T in 1985, that means it's IBM's to keep -- or give away. And SCO's theory that it owns Linux code appears to be kaput.

SCO's claims against IBM

- 28.October.2003
 - The legal war between The SCO Group Inc. and IBM moved forward another step Oct. 24, with the Lindon, Utah-based software company asserting that IBM doesn't have the right to enforce the GNU General Public License (GPL) that governs the Linux operating system. "The GPL is selectively enforced by the Free Software Foundation such that the enforcement of the GPL by IBM or others is waived," SCO claimed in papers filed Friday with the U.S. District Court for the District of Utah.
 - "The Free Software Foundation is the only entity that can enforce the GPL so, in effect, IBM is barred from trying to enforce the GPL with SCO," wrote Blake Stowell, a SCO spokesman, in an e-mail response to questions. SCO's filings also assert that "the GPL violates the U.S. Constitution, together with copyright, antitrust and export control laws."

FSF Responds to SCO

- A lawyer representing the Free Software Foundation disputed SCO's claims that the FSF is the only organization with the necessary legal standing to launch a GPL-based lawsuit. Since IBM holds the copyright to much of the Linux kernel software that's distributed under the GPL license, it has every right to enforce the GPL, he said.
- "The proper enforcer of a copyright is the copyright holder," said Eben Moglen, general counsel for the FSF. "IBM says, 'You're using a copyrighted work of ours in a fashion which is prohibited by the Copyright Act, and you're doing so without our permission. You owe us damages and you must stop.'"

SCO Money Trail and MS

- 19.May.2003
 - Microsoft Corp. has agreed to license Unix technology from The SCO Group in a move that could support SCO's controversial efforts to collect royalties from companies using the open-source Linux operating system, a Unix clone, *The Wall Street Journal* reported today, quoting a Microsoft official. Under the deal, Microsoft will license Unix patents and source code from SCO for an undisclosed amount.

SCO Money Trail and MS

- 26.May.2003
 - Microsoft "would love for corporations to believe that they will have to pay big licensing fees to SCO for using Linux," said Scott Davis, chief technology officer at Realty Times, a Dallas-based real estate Web site. "Anyone who can interpret Microsoft's announcement as anything other than a PR ploy needs a serious reality check."
 - Jeffrey Nicholas, a systems analyst at a large New York financial services firm that he asked not be identified, said he thinks Microsoft wants to help fund SCO's Linux-related legal actions. "The whole thing to me really doesn't smell right," he said. "It seems like it's all just too coincidental."
 - In a research note, Tony Baer, an analyst at onStrategies in New York, called SCO's actions "the software industry's equivalent of terrorism." Baer said he "can only conclude that the licensing of SCO Unix is Microsoft's strategy to drive a new wedge into the Linux community, a sector whose growth poses a far more formidable threat than the empty roars emanating out of SCO."

SCO Money Trail and MS

- 5.March.2004
 - The SCO Group Inc. said yesterday that Microsoft Corp. wasn't involved in raising venture capital funding for the company, dismissing claims that a leaked e-mail demonstrated that Microsoft had helped raise tens of millions of dollars for SCO.
- 11.March.2004
 - Executives from Microsoft Corp. introduced The SCO Group Inc. to an investment fund that provided the Lindon, Utah-based company with a \$50 million investment last October, a spokesman for the fund said today.

SCO Letter to Congress

- On 8.January.2004 SCO sent a letter to the US Congress...
 - It states that the commoditizing influence of open-source software such as the Linux operating system is bad for the U.S. economy and argues that open-source also skirts export controls that govern commercial products.
 - Black said he believes that SCO is operating at the behest of Microsoft Corp., whose Windows operating system is threatened by Linux's popularity. "Most people believe that SCO is ... a foil for our friends in Redmond to create fear, uncertainty and doubt about Linux," he said.
 - After calling Linux and open-source software "un-American" and "a cancer," Microsoft last July announced that it had switched tactics and would resort to analyst reports and case studies instead of name-calling in its battle against Linux.

Other, Related Lawsuits

- 23.May.2003
 - Linux Tag receives restraining order against SCO's German subsidiary, to “put up or shut up” by 30.May.
- 3.September.2003
 - The SCO Group Inc. has been fined \$10,800 for violating a German court's ruling that SCO must cease claiming that the Linux source code violates its intellectual property, the Lindon, Utah, company confirmed yesterday.

Other, Related Lawsuits

- 4.August.2003
 - Red Hat Inc. said today that it has filed a formal complaint in the U.S. District Court of Delaware against The SCO Group Inc. in an effort to show that it hasn't infringed on SCO's intellectual property. It also said it hopes to hold SCO accountable for what it called "unfair and deceptive" actions.
- 7.April.2004
 - Judge delays Red Hat-SCO suit, pending IBM action

Other, Related Lawsuits

- 3.March.2004
 - That lawsuit alleges that DaimlerChrysler violated its software licensing agreement with SCO by refusing to provide a requested "certification of compliance" as part of a software audit. The suit asks the court to permanently bar the automaker from further violations of the software agreement and seeks an injunction requiring it to "remedy the effects of its past violations" of the agreement.
- 21.July.2004
 - Michigan judge throws out SCO lawsuit against DaimlerChrysler

Other, Related Lawsuits

- 3.March.2004
 - Earlier today, in a separate [announcement](#), SCO said its suit against AutoZone alleges that the retailer violated SCO's Unix copyrights through its use of Linux. That suit charges that AutoZone is "running versions of the Linux operating system that contain code, structure, sequence and/or organization from SCO's proprietary Unix System V code in violation of SCO's copyrights."
 - With this lawsuit, SCO is kicking off what it said late last year will be an offensive against companies using Linux in their businesses. SCO sued IBM last March in a suit that now seeks at least \$5 billion in damages, alleging IBM illegally contributed some of SCO's System V Unix code to the Linux open-source project. IBM has countersued.
- This suit is on hold until certain parts of the IBM suit are resolved.

\$ Closing Thoughts \$

- It's all about money (uh-duh) but maybe not the obvious money...
- So what do you do if you're the CEO of a \$65 million software company that's losing money, losing market share and -- worst of all -- has a stock that's lost 99% of its value in the space of two years? If you're Darl McBride of The SCO Group, you file a billion-dollar lawsuit against IBM. Then drop the product you've staked your future on. Then send threatening letters to about 1,500 of your biggest potential customers. Then announce a deal with Microsoft. Result: SCO's stock is up 500% since January. Sort of takes the mystery out of why SCO is taking wild swings at the Linux it championed just months ago, doesn't it?

\$ Closing Thoughts \$

- 28.July.2003

- And how did SCO buy Vultus? With newly issued SCO stock, of course -- stock whose price gets a boost every time the company makes yet another wild claim about who it will sue next.
- Actually, the Vultus deal is a lot more complicated than that. You wouldn't know it from what SCO said last week, but SCO has finally found a way to make money -- literally.
- But every time SCO makes a new, wilder set of legal threats, speculators bid up the price of SCO stock - starting in March, with the IBM lawsuit, then in May, when the threatening letters were sent, then again in June, when SCO tried to make IBM users pull the plug, and again last week. SCO's stock price is now about 10 times what it was six months ago.

\$ Closing Thoughts \$

- 11.August.2003

- Last week Red Hat asked a federal court to issue a declaratory judgment that it hasn't infringed on SCO's copyrights or trade secrets. It's like a copyright infringement lawsuit turned inside out: Instead of SCO's threatened suits to declare Linux users guilty of infringement, this is a suit to have Linux declared innocent
- But I can already guess that Red Hat's argument will go like this:
- None of the code in Linux is illegally similar to Unix code.
- But even if it is similar, that similarity isn't the result of copying.
- But even if it is the result of copying, the code wasn't copied from Unix source code.
- But even if it was copied from Unix, SCO doesn't properly own copyrights for Unix source code.
- But even if SCO does own the Unix copyrights, SCO forfeited control of any code in Linux when it shipped Linux products under the General Public License (GPL).
- But even if SCO didn't forfeit that control under the GPL, the Unix code wasn't used illegally because the generic functions it implements aren't protected by copyright

Torvalds to SCO: Negotiate What?

- 10.September.2003

- In a letter dated yesterday, the maintainer of the Linux kernel dismissed an offer from SCO CEO Darl McBride to negotiate the dispute with the open-source community. "There doesn't seem to be anything to negotiate about. SCO has yet to show any infringing IP [intellectual property] in the open-source domain," Torvalds wrote.
- Torvalds also had a few sarcastic words for Lindon, Utah-based SCO, saying that it's ironic that SCO acquired much of its capital from an initial public offering based on a Linux business model. "We have to sadly decline taking business model advice from a company that seems to have squandered all of its money ... and now seems to play the US legal system as a lottery," he wrote.